

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DUANE REED

Plaintiffs,

VS.

ALLY FINANCIAL, J.P. MORGAN
CHASE BANK, N.A., FIFTH THIRD
BANK N.A. and HOUSTON MAC HAIR
DODGE CHRYSLER JEEP, LTD.
Defendants.

CIVIL ACTION NO. 4:22-cv-03174

**DEFENDANTS J.P MORGAN CHASE BANK, N.A. AND FIFTH THIRD BANK, N.A.'S
MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR JUDGMENT ON THE PLEADINGS**

Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. file this, their Memorandum of Law in Support of their Motion for Judgment on the Pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure in response to Plaintiff Duane Reed's First Amended Complaint. Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. join in Defendant Ally Financial, Inc.'s Motion for Judgment on the Pleadings (ECF No. 48) and its memorandum in support (ECF No. 48-1) and incorporate the reasoning and authorities herein by reference.

I. Issues to be Ruled on by the Court

The issue in the Motion for Judgment on the Pleadings is whether Plaintiff can prevail on her claims against Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. for violations of the Fair Credit Reporting Act §§ 1681b and 1681q when the facts in the Amended Complaint show that Defendant Mac Haik Dodge Chrysler Jeep Ram represented to Defendants

JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. that Plaintiff had submitted a credit application and authorized credit inquiries. The standard of review on a 12(c) motion for judgment on the pleadings is the same as the standard for a 12(b)(6) motion. *Waller v. Hanlon*, 922 F.3d 590, 599 (5th Cir. 2019); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008)

II. Summary of the Argument

Plaintiff's allegations in the amended complaint establish as a matter of law that Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. had a permissible purpose to make credit inquiries and obtain her consumer report.

III. Arguments and Authorities

Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. join in the memorandum in support filed by Defendant Ally Financial, Inc. The factual basis for Plaintiff's claims under the Fair Credit Reporting Act are the same for all the lender defendants in this matter.

In addition to the authorities cited by Defendant Ally Financial, Inc., Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. would also direct the court to *Hutar v. Capital One Financial Corp.*, 2015 WL 4868886 (D. Minn. July 27, 2015). In *Hutar*, the plaintiff applied for financing at an automobile dealer, but told the dealer that she only wanted two financial institutions to pull her credit report. *Id.* at *1. The dealer had sent her credit application to several additional financial institutions beyond the two she verbally authorized. The plaintiff filed suit against each of these additional financial institutions alleging that they violated the Fair Credit Reporting Act by making unauthorized credit inquiries. *Id.*

In granting a 12(b)(6) motion to dismiss for the lenders, the court held that the plaintiff failed to show that the lenders "could not have believed, in good faith, that [she] had authorized

the lenders to obtain her credit report.” *Id* at 4. Notably, the plaintiff failed to allege that the dealer passed on any information indicating that plaintiff had limited her authorization in her credit application.

Plaintiff’s Amended Complaint alleges that she only authorized the dealership to use her credit application in one transaction, but not in a second transaction to be a cobuyer when a friend came to the dealership seeking to finance the purchase of a vehicle. Plaintiff’s Amended Complaint makes no allegation that Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. could not have believed in good faith that Plaintiff had not authorized the credit inquiries when Defendant Mac Haik Dodge Chrysler Jeep presented Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. with Plaintiff’s credit application.

IV. Conclusion

Wherefore, Defendants JP Morgan Chase Bank, N.A. and Fifth Third Bank, N.A. seek dismissal with prejudice of Plaintiff’s claims against them under the Fair Credit Reporting Act and for such other and further relief to which they may be entitled.

Respectfully submitted:

By: /s/ Andrew H. Sharensen
DONALD W. GOULD, II.
Texas State Bar No. 08234250
ANDREW H. SHARENSON
Texas State Bar No.: 24041900

Of Counsel:

JOHNSON DELUCA KURISKY & GOULD, P.C.
A Professional Corporation
4 Houston Center
1221 Lamar, Suite 1000

Houston, Texas 77010
(713) 652-2525 – Telephone

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2023, a copy of the above and foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing has been forwarded to all parties, by and through their attorneys of record, in accordance with Federal Rules of Civil Procedure.

/s/ Andrew H. Sharensen
Andrew H. Sharensen